IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.8068 OF 2006

Shri Shashikant Rameshpant Kavishwar,)
Aged about 64 years, residing at)
Kaustubh, House 269,)
Near Dr.Spruha Kaple Hospital,)
Ruikar Path, Mahal, Nagpur 440 002.).. Petitioner

Vs.

1. Managing Director,)
The Maharashtra State)
Co-operative AGriculture and)
Rural Development Bank Limited,)
Bombay, Plot No.15-A,)
Morvi Lane, Chaupati,)
Bombay - 7.)

2. The Divisional Officer,)
The Maharashtra State)
Co-operative AGriculture and)
Rural Development Bank Limited,)
Bombay, Divisional Office,)
204E/KH, Tarabai Park,)
Near Pearl Hotel, Kolhapur.)

3. The Divisional Officer,
The Maharashtra State)
Co-operative AGriculture and)
Rural Development Bank Limited,)
Bombay, Divisional Office,)
Nagpur, Near Ganeshpeth Police)
Station, Ganeshpeth,)
Nagpur 440 002.).. Respondents

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Shri M.S.Topkar for the Petitioner.

Shri V.P.Sawant for the Respondents.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 12TH DECEMBER, 2006

ORAL JUDGMENT:

1. Heard. Rule. By consent, the rule is made returnable forthwith.

2. The petitioner challenges the judgment and order dated 13th October, 2006 passed by the Industrial Court at Kolhapur, in Revision Application (ULP) No.25 of 2004. The challenge to the impugned judgment and order is restricted to the permission granted to the respondent/employer to lead additional evidence consequent to the findings arrived at by the Labour Court about the inquiry being vitiated.

3. The learned advocate appearing for the petitioner, while drawing attention to the decisions of the Apex Court in **Delhi Cloth and General Mills Co. v. Ludh Budh Singh,** reported in AIR 1972 SC 1031, **Shankar Chakravarti v. Britannia Biscuit Co. Ltd. & Anr.,** reported in AIR 1979 SC 1652, **Shambhu Nath Goyal v. Bank of Baroda & Ors.,** reported in AIR 1984 SC 289, **Karnataka State Road Transport Corporation v. Lakshmidevamma (Smt.) & Anr.,** reported in 2001 II CLR 640, submitted that the Industrial Court has failed to consider that the decision about the refusal of

permission to the employee to amend the written statement in relation to the right to lead additional evidence had attained finality consequent to the earlier order of the Industrial Court and thereby acted illegally in directing the Labour Court to grant permission to the respondent-employer to lead additional evidence by the impugned order. The Industrial Court, in effect, by the impugned order has set aside and reviewed its earlier order passed in another revision application between the same parties and arising out of same proceedings. In fact, the earlier order had attained finality, and therefore, it could not have been subjected to reconsideration in the present revision application, nor in the circumstances the decision of the Apex Court in **Divyash Pandit v. Management, NCCBM,** reported in (2005)2 SCC 684 was attracted.

4. The learned advocate appearing for the respondents, on the other hand, placing reliance in the decisions of the Apex Court in **The Hindustan Construction Co. Ltd. v. Shri G.K.Patankar & Anr.,** reported in (1976)1 SCC 810 and **Bharat Forge Co.Ltd. v. A.B.Zodge & Anr.,** reported in (1996)4 SCC 374, has submitted that the Industrial Court, having found that the Labour Court ought to have given an opportunity to

the respondent-bank to establish the charges which were levelled against the petitioner-complainant consequent to its finding about the inquiry being vitiated, has directed to exercise the power in terms of Section 11A of the Industrial Disputes Act, 1947 and in that context, it cannot be said to have reviewed its earlier order passed in another revision application. In fact, it has followed the decision of the Apex Court in **Divyash Pandit's case (supra),** and to that extent, a substantial justice has been done which would not warrant interference in exercise of powers under Article 227 of the Constitution of India.

5. The Industrial Court, after taking into consideration the decisions of the Apex Court in **Workmen of Motipur Sugar Factory (Pvt.) Ltd. v. Motipur Sugar Factory,** reported in 27 FJR 376, **Cooper Engineering Ltd. v. P.P.Munde,** reported in (1975)48 FJR 152 and **K.S.R.T.C.'s case (supra)** as well as **Divyash Pandit's case (supra),** has held thus:-

> "In the case in hand, the Bank had preferred an application at Exh.C-34 for making an amendment in the Written-statement but, the same was dis-allowed. The said order was confirmed by the Industrial Court.

> Thereafter, the Labour Court after considering entire material on record, came to the findings that the enquiry was non-est. The facts of the case warranted that the Labour Court should have given one opportunity to the Petitioner Bank to establish the charges before delivery of the Judgment in favour of the Complainant. This aspect was never considered by the Labour Court when it concluded that the enquiry was non-est. Divyash Pandit's case cited (supra) makes it amply clear that even if, the management had not made any prayer for submitting additional evidence in its written-statement the Labour Court under its powers could permit the Bank to adduce additional evidence to justify its action. This particular aspect has been totally ignored by the Labour Court."

6. The law on the point, as regards the right of the management to lead additional evidence in support of the charges levelled against the employee consequent to the finding by the Labour Court about the inquiry being vitiated is not in dispute. The points for consideration which arise in the matter relate to the prerequisites for exercise of the said

right, the stage at which it can be exercised, the procedure to be followed for exercise of such right and the powers of the Labour/Industrial Court in that regard.

7. In **Delhi Cloth and General Mills Co.'s case (supra),** the Apex Court has observed that the Delhi and Madhya Pradesh High Courts had held that it is the duty of the Tribunal to decide, in the first instance, the propriety of the domestic enquiry held by the management and if it records a finding against the management, it should suo motu provide an opportunity to the management to adduce additional evidence, even though the management had made no such request, and further that the said view was held to be erroneous by a decision of the Apex Court in **The State Bank of India v. R.K.Jain & Ors.,** reported in AIR 1972 SC 136. Certain broad principles, which emerged on the basis of various decisions delivered by the Apex Court on the point in issue were paraphrased as under:-

> "(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held

by it, it is entitled to straightway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, that the

management has given up the enquiry conducted by it.

(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider

the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited

by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is

guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for

by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly it is not its

function to invite suo motu the employer to adduce evidence before it to justify the action taken by it.

(7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference under Section 10 or by way of an application under Section 33 of the Act."

8. In **Shankar Chakravarti's case (supra)**, the Apex Court held that the contention that there is something like "an obligatory duty" of the Labour or Industrial Court to call upon the employer to adduce additional evidence if it so chooses, after recording a specific finding on the preliminary issue as to whether there was no enquiry or the one held was defective, was negatived in **Delhi Cloth and General Mills Co.'s case (supra)**. It was also observed that in **Cooper Engineering Ltd.'s case (supra)** (AIR 1975 SC 1900) the contention regarding the denial of opportunity to lead evidence on account of failure of the Tribunal to pass an order on the written request on behalf of the employer in that regard before

disposal of the matter was rejected. Referring to the decision in **Workmen of Firestone Tyre & Rubber Co. of India (P.) Ltd v. The Management & Ors.,** 1973 Lab IC 851, it was observed that the Apex Court therein had held that the employer who wants to adduce evidence for the first time before the Tribunal to justify its action should ask for it at the appropriate stage and if such opportunity is availed by the employer, the Tribunal has no power to refuse, but it is not for a moment can be suggested that there is some duty or obligation as a matter of law cast upon the Tribunal to call upon the employer to adduce additional evidence even if no such opportunity is sought to be availed by the employer himself. Further, referring to the decision in **Cooper Engineering Ltd.'s case (supra),** it was observed that there is nothing in the decision to suggest that the Apex Court therein had specifically overruled the decision in **State Bank of India v. R.K.Jain**, (1972 Lab IC 13). It is clarified that the Apex Court had thereby negatived the contention of the employer that there is an obligatory duty in law on the Labour Court or the Industrial Tribunal to give an opportunity to the employer irrespective of the fact whether it is asked for or not to adduce additional evidence after recording a finding on the preliminary issue that

either no domestic enquiry was held or the one held was defective. It was also held that the **Cooper Engineering Ltd. case (supra)** is not an authority for the proposition in every case coming before the Labour Court or Industrial Tribunal under Section 10 or Section 33 of the Act complaining about the punitive termination of service following a domestic enquiry that the Court or Tribunal as a matter of law must first frame a preliminary issue and proceed to decide the validity or otherwise of the enquiry and then serve a fresh notice on the employer by calling upon the employer to adduce further evidence to sustain the charges if it so chooses to do. It was also ruled that the quasi-judicial tribunal is not required to advise the party either about its rights or what it should do or omit to do. Burden to prove by leading necessary evidence to establish an allegation made by a party is on the party making the allegation. The test would be who would fail if no evidence is led. It must seek an opportunity to lead evidence and lead evidence. It was also held that the pleadings before such bodies are not to be read strictly, but at the same time, the pleadings must be such that same should give sufficient notice to the other party of the case it is called upon to meet. Referring to the decision in **Tin Printers (Pvt.) Ltd. v. Industrial Tribunal,**

(1967)2 Lab LJ 677, it was held thus:-

> "The rules of fair play demand that where a party seeks to establish a contention which if proved would be sufficient to deny relief to the opposite side, such a contention has to be specifically pleaded and then proved. But if there is no pleading there is no question of proving something which is not pleaded. This is very elementary."

It was also observed that if no such pleading is put forth either at the initial stage or during the pendency of the proceedings, there arises no question of a sort of advisory role of the Labour Court or the Industrial Tribunal, as it is unintended by the Act to advise the employer, a party much better off than the workman, to inform it about its rights, namely, the right to lead additional evidence and then give an opportunity which was never sought.

9. In the **Workmen of M/s.Firestone Tyre & Rubber Co. of India P.Ltd. (supra),** after taking into consideration all earlier decisions, it was ruled that the following principles broadly emerge therefrom:-

> "(1) The right to take disciplinary

action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The

inference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to

consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightway,

without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by

an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate v. The Workmen, 1971-1 SCC 742 = (AIR 1971 SC 2171) within the judicial decision of a Labour Court or Tribunal."

It was further ruled that :-

"If there has been no enquiry held by the employer or if the enquiry is held to be defective, it is open to the employer even now

to adduce evidence for the first time before the Tribunal justifying the order of discharge or dismissal. We are not inclined to accept the contention on behalf of the workmen that the right of the employer to adduce evidence before the Tribunal for the first time recognized by this Court in its various decision, has been taken away. There is no indication in the section that the said right has been abrogated. If the intention of the legislature was to do away with such a right, which has been recognised over a long period of years, as will be noticed by the decisions referred to earlier, the section would have been differently worded. Admittedly there are no express words to that effect, and there is no indication that the section has impliedly changed the law in that respect. Therefore, the position is that even now the employer is entitled to adduce evidence for the first time before the Tribunal even if he had held no enquiry or the enquiry held by him is found to be defective. Of course, an opportunity will have to be given to the workman to lead evidence contra. The stage at which the employer has to ask for such an opportunity,

has been pointed out by this Court in Delhi Cloth and General Mills Co. Ltd. 1972-1 Lab LJ 180 = (AIR 1972 SC 1031). No doubt, this procedure may be time consuming, elaborate and cumbersome. As pointed out by this Court in the decision just referred to above, it is open to the Tribunal to deal with the validity of the domestic enquiry, if one has been held as a preliminary issue. If its finding on the subject is in favour of the management then there will be no occasion for additional evidence being cited by the management. But if the finding on this issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence justifying his action. This right in the management to sustain its order by adducing independent evidence before the Tribunal, if no enquiry has been held or if the enquiry is held to be defective, has been given judicial recognition over a long period of years."

10. In **Shambhu Nath Goyal's case (supra),** the Apex Court had held that if the request is made before the

proceedings are concluded, the Labour Court or the Industrial Tribunal should ordinarily grant the opportunity to adduce evidence. But if no such request is made at any stage of the proceedings, there is no duty in law cast on the Labour Court or the Industrial Tribunal to give such an opportunity and if there is no such obligatory duty in law, failure to give any such opportunity cannot and would not vitiate the proceedings. It was also held therein that if the management choses to exercise its right, it must make up its mind at the earliest stage and file the application for that purpose without any unreasonable delay. But in a reference under Section 10 of the Act, after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry, no question of the management filing any application for permission to lead further evidence in support of the charge or charges framed against the workman can arise for the defect in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the management has the opportunity to look into that statement before it files its written statement of defence in the enquiry before the Labour Court or Industrial Tribunal and could make the

request for the opportunity in the written statement itself. If it does not choose to do so at that stage, it cannot be allowed to do it at any later stage of that proceedings by filing any application for the purpose which may result in delay and may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do.

11. In **Karnataka State Road Transport Corporation's case (supra)**, the constitutional bench of the Apex Court by majority view held that the law laid down by the Apex Court in **Shambhu Nath Goyal's case (supra)** is the correct law on the point decided therein. It was clarified therein that the question which was considered by the Constitutional Bench was as to at what stage the management should seek leave of the Labour Court or the Tribunal to lead additional evidence to justify its decision and not relating to the power of the Court or the Tribunal to require or direct the parties to produce evidence. It was further observed that:-

> ".....the Labour Courts/Tribunals have power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case demand the same to meet the ends of

> justice in a given situation. We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the Court/Tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. **But this should not be understood as placing fetters on the powers of the Court/Tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if, on facts and circumstances of the case, it is deemed just and necessary in the interest of justice."** (Emphasis supplied.)

12. The Constitutional Bench of the Apex Court has thus clearly held that the decision in **Shambhu Nath Goyal's case (supra)** lays down the correct proposition of law on the matter in issue and has further clarified that the same related to the stage at which the management should seek leave of the Labour Court or the Tribunal to lead evidence to justify its action and decision. Being so, it is abundantly clear that such a request to seek leave for adducing additional

evidence should be obviously at the time of filing of the pleadings in the form of written statement by the management. But, at the same time, it has also been clarified that it should not be understood as placing fetters on the powers of the Court/Tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if, on facts and circumstances of the case, it is deemed just and necessary in the interest of justice.

13. Obviously, therefore, the powers of the Labour Court or Tribunal, as submitted on behalf of the management, are not curtailed to direct the parties or to allow the parties to lead additional evidence at any stage of the proceedings. However, there are two riders provided by the Apex Court while recognising such power of the Labour Court or Tribunal and they are; (i) the facts and circumstances of the case should warrant such exercise of powers by the Court or Tribunal and (ii) it should be deemed just and necessary in the interest of justice to allow the parties to lead such additional evidence. In other words, before the Labour Court or Industrial Tribunal exercises the powers under Section 11A to permit or to allow the parties or even to direct the parties to

lead additional evidence, the Court or Tribunal has to arrive at a specific finding based on the facts and circumstances of the case that such an exercise is warranted and secondly that it is just and necessary in the interest of justice to allow the parties to lead such additional evidence. The power is not to be exercised as a matter of course merely because the Court or Tribunal finds that the inquiry is said to have been vitiated. In order to exercise such power, this preliminary exercise by the concerned Court or Tribunal is absolutely necessary, and that is the decision of the Constitutional Bench of the Apex Court in **K.S.R.T.C.'s case (supra).**

14. The impugned award is solely on the basis of the decision of the Apex Court in **Divyash Pandit's case (supra).** The Apex **Court in Divyash Pandit's case (supra)**, after considering the facts of that case held that:-

> "We are of the view that the order of the High Court dated 2-12-2002 as clarified on 3-3-2003 does not need any interference. It is true no doubt that the respondent may not have made any prayer for (sic submitting) additional evidence in its written statement but, as held

> by this Court in Karnataka SRTC v. Laxmidevamma this did not place a fetter on the powers of the Court/Tribunal to require or permit parties to lead additional evidence including production of document at any stage of proceedings before they are concluded. Once the Labour Court came to the finding that the enquiry was non est, **the facts of the case** warranted that the Labour Court should have given one opportunity to the respondent to establish the charges before passing an award in favour of the workman."
>
> (Emphasis supplied.)

15. The decision in **Divyash Pandit's case (supra)** is apparently in the facts of that case. The Apex Court therein before upholding the decision of the High Court dated 2nd December, 2002 as clarified on 3rd March, 2003, has referred to the facts of that case. Therein, the Apex Court has observed that the Issue No.4, which was required to be decided by the Labour Court, was whether the domestic enquiry held by the management was improper and invalid and whether the finding was perverse? It was further observed that according to the award, the respondent had given

up all other issues. The paragraph (2) of the said decision discloses that the matter involved three other issues. It was further observed that the enquiry was improperly held and the conclusion reached by the enquiry officer was perverse. The order of the enquiry officer was set aside and the appellant was directed to be reinstated with continuity of service and full back wages. The Apex Court taking specific note of the concluding portion of the Labour Court's award wherein it was held that "there was no request till today of the management to lead evidence in support of charges and .....", and further the Labour Court despite holding that the enquiry conducted by the management was "non est in the eye of the law", did not allow the management to lead additional evidence to establish the charges against the appellant, observed that:-

> "Be that as it may, immediately after the award was passed an application was made by the respondent for review of the award. In the application the employer stated (1) that it had not foregone the other issues, and (2) that an opportunity should be granted to the management to establish its case. The review application was dismissed by the Labour Court

> rejecting the first submission. However, the Labour Court did not apply its mind to the prayer of the management that **it should have been granted an opportunity of leading evidence."** (Emphasis supplied)

The Apex Court has further observed that the respondent therein had filed a writ petition before the High Court challenging the award of the Labour Court. The writ petition was allowed and the award was set aside. The High Court was of the view that the Labour Court should adjudicate all the issues afresh. The matter was accordingly remanded back to the Labour Court for deciding all the issues afresh and the said order was passed on 2nd December, 2002. The respondent made an application for clarification of the said order dated 2nd December, 2002 and by an order dated 3rd March, 2003, the High Court clarified the order dated 2nd December, 2002 and held that it had in fact directed all four issues to be redecided and also directed the Labour Court to give only one opportunity to the management to lead evidence on Issue No.4. Against the said orders of the High Court, the matter was carried before the Apex Court and therein the above quoted order was passed by the Apex Court.

16. The decision in **Divyash Pandit's case (supra)**, therefore, discloses that, following the decision of the Constitutional Bench of the Apex Court in **K.S.R.T.C.'s case (supra)**, in the peculiar facts and circumstances of **Divyash Pandit's case (supra)**, the Apex Court held that that was a fit case for grant of one opportunity to the management to lead evidence in support of the charges of misconduct by the employee. The decision in **Divyash Pandit's case (supra)** does not lay down any law independently or something different from what has been laid down by the Constitutional Bench of the Apex Court in **K.S.R.T.C.'s case (supra)**. It rather follows the said decision in the facts and circumstances of the case of **Divyash Pandit.** To that extent, the learned advocate appearing for the petitioner is justified in contending that the Industrial Court did not apply its mind to consider whether the decision in **Divyash Pandit's case (supra)** lays down a law different from the one laid down by the Constitutional Bench of the Apex Court in **K.S.R.T.C.'s case (supra).**

17. Reverting to the facts of the case in hand, it is undisputed fact that on conclusion of recording of the evidence by the workman, the respondent management

herein had filed an application for amendment of the written statement in order to include a statement to the effect that "If the Hon'ble Court comes to the conclusion that the enquiry conducted against the complainant is illegal, improper and the findings are perverse, in that case the respondent be allowed to lead evidence in support of their contentions and charges." The Labour Court, by its order dated 25th February, 2002, dismissed the said application. The matter was carried in revision being Revision Application (ULP) No.33 of 2002 which came to be dismissed by the Industrial Court by its order dated 29th July, 2003. While dismissing the said revision application, the Industrial Court observed thus:-

> "In the present case, the Bank is practically making an application under the guise of the amendment application, seeking permission to adduce evidence to justify its action. In other words, prayer to lead evidence is made in the form of the amendment application."

Thereafter, the Labour Court finally disposed of the matter by its judgment and order dated 6th May, 2004.

18. The impugned judgment apparently discloses

that the Industrial Court had taken note of the earlier proceedings in relation to the amendment application and thereafter has directed the Labour Court to permit the respondent bank to adduce additional evidence to justify its action taken against the petitioner-complainant. While issuing the said direction, the Industrial Court has, undoubtedly, observed that in the facts of the case the Labour Court should have given one opportunity to the petitioner bank to establish the charges before delivery of the judgment in favour of the complainant and since this aspect was not considered by the Labour Court after arriving at the finding that the enquiry was non-est that applying the decision in **Divyash Pandit's case (supra),** such directions are warranted.

19. At the outset, it is to be noted that the Industrial Court has nowhere held that such an opportunity was just and necessary in the interest of justice. The contention, however, on behalf of the management is that though there is no specific observation in that regard, the very fact that such direction has been issued in the revisional jurisdiction, even though it has not been said in so many words that such direction was just and necessary in the interest of justice, the same shall be presumed

to have considered by the Industrial Court. Even assuming that the Industrial Court has found that such direction to be just and necessary in the interest of justice to the management, the point still remains that which are those facts and circumstances which would warrant such direction ? The Industrial Court has nowhere referred to any particular fact or facts which would warrant such direction. The statement that "the facts of the case warrant" is different from referring to a particular fact or facts which would warrant and justify the exercise of powers by the Labour Court or Tribunal under Section 11A of the Industrial Disputes Act to give an opportunity to the employer to lead additional evidence. It is not a mere phrase that "the facts of the case warrant", that is sufficient to exercise powers under Section 11A of the Act. The Labour Court or Industrial Tribunal exercising such power has necessarily to refer to the fact or facts which would warrant exercise of such power and only thereafter to ascertain whether an opportunity would be just and necessary in the interest of justice. Apparently, the impugned order nowhere discloses any such exercise having been done by the Industrial Court. It is pertinent to note that the Industrial Court was fully aware of the fact that the management had applied for leave to amend the

written statement incorporating the pleadings therein to the effect that the management would exercise its right to lead evidence in case the Labour Court comes to a finding about the enquiry to have been vitiated. The said request was rejected by the Labour Court and in the revision also, the same was rejected and therefore, the said order had attained finality. In fact, the paragraph 26 of the impugned order clearly refers to the arguments in that regard made on behalf of the complainant, which reads thus:-

> "The Petitioner Bank did not challenge the order of the Revisional Court before Hon'ble High Court and as such the order of the Labour Court rejecting the application Exh.C-34 seeking the amendment in the w.s. has attained finality."

Undoubtedly, the Industrial Court has further observed that in the case in hand, the Labour Court had decided all the issues including the issue relating to enquiry as to whether the enquiry is vitiated or not, and thereby the management was prejudiced as it had no opportunity to request the Labour Court to permit it to adduce additional evidence to justify its action. The finding is totally contrary to the materials on

record and is to the knowledge of the Industrial Court. The Industrial Court was informed that the management did apply for amendment in the written statement incorporating its right to lead additional evidence. However, the said application was rejected by the Labour Court and the order of rejection was confirmed by the Industrial Court. Being so, the Industrial Court had no reason to hold that the management had been prejudiced on account of

alleged non-availability of the opportunity to adduce additional evidence to justify its action. Indeed, the management did try to avail such opportunity by seeking to amend the written statement, however, the same was rejected and the order of rejection in that regard was confirmed by the Industrial Court. The finding of the Industrial Court in the impugned order that the management is prejudiced on account of lack of opportunity to make request to the Labour Court to permit it to adduce additional evidence, is, therefore, perverse and cannot be sustained. In the background of these facts, therefore, it was absolutely necessary for the Industrial Court to ascertain as to whether in the facts and circumstances of the case, the Labour Court could exercise its discretion under Section 11A of the Industrial

Disputes Act and allow the respondent management to lead additional evidence in support of the charges levelled against the petitioner-complainant. The Industrial Court totally ignored the above aspect of the matter before arriving at the conclusion that the Labour Court ought to have given one opportunity to the management to justify its action taken against the complainant. The impugned judgment and order, therefore, in that regard cannot be sustained.

20. The decisions of the Apex Court in **The Hindustan Construction Co.Ltd.'s case (supra)** as well as **Bharat Forge Co.Ltd.'s case (supra)** which are sought to be relied upon by the learned advocate appearing for the management are of no assistance to the respondent-management. In **Bharat Forge Co.Ltd.'s case (supra),** the Apex Court, while dealing with the question as to whether the Industrial Tribunal was justified in refusing the prayer of the employer to lead evidence in support of the order of dismissal passed against the respondent-employee, held that "There is no dispute in the present case that before the closure of the proceedings before the Tribunal, prayer was made by the employer to lead evidence in support of the impugned order of dismissal. Hence, denial of the opportunity to the employer to lead

evidence before the Tribunal in support of the order of dismissal cannot be justified." In the background of the fact where prayer of the employer to permit it to lead further evidence before the Tribunal was rejected, the Apex Court held that the Tribunal was not justified in refusing such prayer. The decision in **Bharat Forge Co.Ltd.'s case (supra)** nowhere deals with the issue as to what stage the employer can request for opportunity to adduce additional evidence, after the finding about the inquiry being vitiated. Applying the law laid down by the Constitutional Bench of the Apex Court in **K.S.R.T.C.'s case (supra)**, the decision of the Apex Court in **Bharat Forge Co.Ltd.'s case (supra)** can be of no help to the respondents in the case in hand to justify the impugned order.

21. In **The Hindustan Construction Co.Ltd.'s case (supra)**, the Apex Court had held that the award given by the Tribunal had not occasioned a failure of justice. While the company paid Rs.20 lakhs as additional relief at the branches, it incurred an expenditure of only Rs.1 lakh at the head office. This was justified on the principle of uniformity which serves to maintain industrial peace, and in those circumstances, if the High Court refused to interfere on the ground that substantial justice had

been done, there was no reason to hold that the High Court had exercised its discretion arbitrarily, and in those circumstances, the Apex Court had refused to interfere in the decision by the High Court. That is not the case in the matter in hand.

22. In the facts and circumstances of the case, the impugned order has occasioned a failure of justice in as much as that inspite of the fact that the order disallowing the respondents to lead additional evidence having attained finality consequent to the order dated 29th July, 2003 in the Revision Application (ULP) No.33 of 2002 and without considering the facts which would warrant the Labour Court to permit the respondent-management to lead further evidence in the matter, the Industrial Court in its revisional jurisdiction has interfered with the order passed by the Labour Court. Hence, the impugned order cannot be sustained and is liable to be quashed and set aside.

23. Knowing well the parameters of the exercise of jurisdiction under Article 227 of the Constitution of India, in the facts and circumstances of the case, therefore, while setting aside the impugned order, the matter will have to be remanded to the Revisional

Court to deal with the revision application afresh in accordance with the provisions of law and bearing in mind the observations made hereinabove and to pass an appropriate order in that regard.

24. In the result, therefore, the petition succeeds. The impugned order dated 13th October, 2006 is hereby quashed and set aside and the matter is remanded to the Industrial Court at Kolhapur, to decide afresh the Revision Application (ULP) No.25 of 2004 in accordance with the provisions of law and bearing in mind the observations made hereinabove. Needless to say that the revision application is to be decided in its entirety. The Rule is made absolute in above terms with no order as to costs.

(R.M.S.KHANDEPARKAR, J)